87-1497
No.

IN THE
Supreme Court of the United States
October Term, 1987

EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,
Petitioner,

v.

LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S. SANSONE, R. JERRY COOK, HOWARD McDOUGALL, ROBERT J. BAKER, R. V. PULLIAM, SR., AND ARTHUR H. BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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February 19, 1988

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

LORAN W. ROBBINS, et al.,	)	
	)	APPEAL NOS. 86-1347SI
Appellants,	)	86-1399SI
	)	
vs.	)	
	)	
IOWA ROAD BUILDERS COMPANY, and EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	ORDER DENYING PETITION FOR REHEARING
Appellees.	)	

The petition for rehearing en banc of appellants and appellee, Easter Enterprises, Inc., have been considered by the Court and are denied.

Petitions for rehearing by the panel are also denied.

November 24, 1987

Order entered at the Direction of the Court:

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 86-1347

Loran W. Robbins; Marion M. Winstead; Harold J. Yates; Earl L. Jennings, Jr.; Howard McDougall; Robert J. Baker; Thomas F. O'Malley; and R. V. Pulliam, Sr.; Trustees of the Central States, Southeast and Southwest Areas Pension Fund, and Central States, Southeast and Southwest Areas Health and Welfare Fund,

Appellants,

v.

Iowa Road Builders Company,

Appellee.

Appeals from the United States District Court for the Southern District of Iowa

No. 86-1399

Loran W. Robbins; Marion M. Winstead; Harold J. Yates; Earl L. Jennings, Jr.; Howard McDougall; Robert J. Baker; Thomas F. O'Malley; and R. V. Pulliam, Sr.; Trustees of the Central States, Southeast and Southwest Areas Pension Fund, and Central States, Southeast and Southwest Areas Health and Welfare Fund,

Appellants,

v. *
Easter Enterprises, Inc., *
d/b/a/ Ace Lines, Inc. *
Appellees. *

Submited: December 8, 1986
Filed: September 21, 1987

Before McMILLIAN and BOWMAN, Circuit Judges, and CONMY,* District Judge.

McMILLIAN, Circuit Judge.

These cases have been consolidated for purposes of appeal. Appellants are the trustees of two large multiemployer employee benefit plans, the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter collectively the funds), that operate as trusts for the purpose of providing certain health, welfare and pension benefits to employees covered by collective bargaining agreements negotiated between various employers and local Teamster unions. The funds were established pursuant to § 302(c)(5) of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. § 186(c)(5), and are governed by the provisions of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 29 U.S.C. § 1145.

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*The Honorable Patrick A. Conmy, Chief Judge, United States District Court for the District of North Dakota, sitting by designation.

Appellants appeal from two orders entered in the District Court for the Southern District of Iowa applying Iowa's two-year statute of limitations for actions under the Iowa wage payment collection law, Iowa Code Ann. §§ 91A, 614.1(8) (West 1984 & Supp. 1987). *Robbins v. Easter Enterprises, Inc.*, 650 F.Supp. 199, 201 (S.D. Iowa 1985) (*Easter Enterprises); Robbins v. Iowa Road Builders Co.*, Civil No. 84-471-A, slip op. at 4 (S.D. Iowa Mar. 6, 1986) (*Iowa Road Builders*). For reversal appellants argue the district court should have instead applied either Illinois's ten-year statute of limitations for actions for breach of written contracts, Ill. Rev. Stat. ch. 110, § 13-206 (1985), pursuant to the choice of law provision in the trust agreements and conflict of laws analysis, or, alternatively, pursuant to the law of the forum state, Iowa's ten-year statute of limitations for actions for breach of written contracts, Iowa Code Ann. § 614.1(5). For the reasons discussed below, we reverse and remand each case for further proceedings consistent with this opinion.

Robbins v. Iowa Road Builders Co., No. 86-1347

Iowa Road Builders Co. (hereinafter IRB), an Iowa corporation engaged in the business of heavy construction, entered into a collective bargaining agreement with Teamsters Local 90 covering IRB employees at IRB's Ames plant, effective May 1979-April 1982. In 1981 IRB opened another plant in Des Moines; IRB and Local 90 entered into a separate collective bargaining agreement covering IRB's Des Moines employees, effective August 1981-July 1982, renewable every year. Each collective bargaining agreement required IRB to participate in the funds and to make monthly contributions to the funds at specified rates on behalf of its employees. The rate of contribution for IRB's Des Moines employees was higher than that for IRB's Ames employees. On August 1, 1981, IRB signed a "participation agreement" in which it

agreed to be bound by the terms of the funds. In September 1981 IRB and Local 90 agreed that IRB's contributions for any Ames employees who were "temporarily" transferred to the Des Moines plant would be made at the lower rate for Ames employees.

Later appellants and IRB disagreed about the applicable rate of contributions to be made for certain IRB employees who worked at the Des Moines plant for several months during 1981. IRB treated these employees as only temporary transfers and thus argued that contributions to the funds for these employees were to be made at the lower Ames rate. Appellants, however, argued that these employees should have been treated as either permanent transfers or new hires, and therefore IRB should have made contributions to the funds for these employees at the higher Des Moines rate.

On June 22, 1984, appellants filed a complaint in federal district court against IRB pursuant to LMRA § 301(a), 29 U.S.C. § 185(a), and ERISA § 502, 29 U.S.C. § 1132 (as amended by MPPAA § 306, 29 U.S.C. § 1145, to recover the delinquent contributions. Appellants sought $4,667.00 in delinquent contributions to the pension fund, $1,652.50 in delinquent contributions to the health and welfare fund, plus interest, liquidated damages, and attorney's fees and costs. IRB moved for summary judgment, arguing that this dispute arose, and thus appellants' claim for delinquent contributions to the funds necessarily accrued, at some point before November 1981, when IRB ceased operations. Thus, IRB argued, because appellants' complaint was not filed until June 1984, more than two years later, it was barred by the two-year statute of limitations applicable to Iowa wage payment collection actions. The district court agreed with IRB's statute of limitations argument and granted summary judgment in favor of IRB. *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 4. Appellants appealed.

Robbins v. Easter Enterprises, Inc. (Ace Lines, Inc.), No. 86-1399

Easter Enterprises, Inc., doing business as Ace Lines, Inc., an Iowa corporation engaged in the trucking business (hereinafter Ace Lines), entered into the following collective bargaining agreements with Teamsters Local 147: the 1976-1979 and 1979-1982 National Master Freight Agreement (NMFA), Central States Area Local Cartage Supplemental Agreement and the Central States Area Over-the-Road Supplemental Agreement. (Ace Lines also entered into similar collective bargaining agreements with Teamsters Local 544, which represented a small group of Ace Lines employees located in Minneapolis.) The supplemental agreements incorporated the trust agreements by reference and required Ace Lines to make monthly contributions on behalf of regular employees on the payroll for 30 days to the funds. Ace Lines also executed "participation agreements" in which it agreed to be bound by the terms of the trust funds.

Under the terms of the NMFA, subcontracting was prohibited except on an "overflow" basis. The NMFA also prohibited local unions and employers from entering into agreements or "riders" to modify the terms of the NMFA without the approval of the Conference Joint Area Committee or the National Grievance Committee. The NMFA further provided that any substandard riders or riders that had not been approved by either committee were null and void.

In December 1983 appellants filed an action in federal district court against Ace Lines pursuant to LMRA § 301(a), 29 U.S.C. § 185(a), and ERISA § 502, 29 U.S.C. § 1132 (as amended by MPPAA § 306, 29 U.S.C. § 1145), to recover delinquent contributions. Appellants sought $56,011.60 in delinquent contributions to the pension fund, and $32,671.59 in delinquent contributions to the health and welfare fund, through Octo-

ber 19, 1983, plus interest, liquidated damages, and attorney's fees and costs. In January 1984 Ace Lines filed an answer, specifically asserting, in addition to other defenses, that appellants' action was barred by either the six-month statute of limitations applicable to hybrid § 301/breach of the duty of fair representation claims, citing *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 158 (1983) *(DelCostello)*, or by the two-year statute of limitations applicable to Iowa wage payment collection actions, Iowa Code Ann. § 614.1(8).

During the fall of 1984, by agreement of the parties, fund auditors were permitted to examine Ace Lines' books and records. The auditors discovered substantial additional delinquent contributions. In November 1984 appellants filed a motion for leave to amend their complaint to add claims for the newly discovered delinquent contributions. Most of the newly discovered delinquent contributions were due under the 1979-1982 agreements, but some were due under the earlier 1976-1979 agreements. In December 1984 appellants submitted, but did not file because the magistrate had not yet ruled on their motion for leave to amend, their first amended complaint seeking an additional $1,040,000, plus interest, in delinquent contributions to the pension fund, and $110,000, plus interest, in delinquent contributions to the health and welfare fund.

Appellants claimed that Ace Lines and Teamsters Local 147 had executed improper "riders" to the NMFA under which Ace Lines had stopped contributing to the pension fund on behalf of certain "company drivers" and "owner-operators" hired after April 1, 1979, and had instead established and contributed to non-Teamster pension funds for these employees, and had withheld contributions to the health and welfare fund until its employees had been employed for 60 days, instead

of the 30 days provided in the NFMA. Appellants argued that these "riders" had not been approved by either the Conference Joint Area Committee or the National Grievance Committee and thus were invalid and unenforceable. Appellants also argued that Ace Lines' "trip-leasors" were regular employees, not subcontractors, and thus Ace Lines should have made contributions to the funds for them.

Ace Lines opposed appellants' motion for leave to amend and renewed its argument that most of appellants' claims for unpaid contributions were barred by a two-year statute of limitations. Appellants argued that their claims, even for contributions allegedly due in 1976, were not time-barred because the applicable statute of limitations was either the Illinois ten-year statute of limitations for actions on written contracts, specified by the choice of law provision in the trust agreements, or the Iowa ten-year statute of limitations for actions on written contracts. Appellants argued that application of the shorter two-year statute of limitations to claims against employers for delinquent contributions due to employee benefit funds, which operate under a self-reporting contribution system, subject to random audits, would unduly frustrate the policy objectives of ERISA.

In January 1985 the magistrate granted appellants' motion for leave to file Count I of their amended complaint, but applied the two-year statute of limitations applicable to Iowa wage payment collection actions, thus limiting appellants' claims for delinquent contributions to those filed in December 1983. *Robbins v. Easter Enterprises, Inc.*, Civ. No. 83-687-B, slip op. at 2 (S.D. Iowa Jan. 23, 1985) (order of magistrate).[1] The

[1]The magistrate also denied appellants leave to file Count II of their amended complaint which alleged withdrawal liability under ERISA, as amended by the MPPAA, on the grounds that withdrawal liability was subject to arbitration; the dismissal of Count II is not an issue in these appeals.

district court affirmed the magistrate's decision but modified the order to toll the running of the two-year limitations period from December 6, 1984, the date of the amended complaint, instead of the original filing date. 650 F.Supp. at 201-02. The district court also reconsidered its characterization of the nature of the action in light of *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364 (1984) (*Schneider Moving*), and reaffirmed its view of the action as one involving enforcement of collective bargaining agreements, not trust agreements. 650 F.Supp. at 202 (Mar. 7, 1986) (order on post-trial motions). The district court then certified its order as one involving "a controlling question of law as to which there is substantial ground for difference of opinion" for immediate appeal. *Id.*; 28 U.S.C. § 1292(b). This court granted the interlocutory appeal (No. 86-1399) and consolidated the cases for purposes of appeal.

The district court's analysis of the statute of limitations defense was the same in each case. The district court acknowledged in each case that appellants' claims for delinquent contributions to the pension fund and health and welfare fund were based on ERISA, as amended by the MPPAA. *Easter Enterprises*, 650 F.Supp. at 201; *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 1. The district court, however, then characterized the "gravamen" of appellants' complaint in each case as involving the employer's "alleged failure to comply with its obligations under the collective bargaining agreements" and thus viewed these cases as actions to enforce collective bargaining agreements and not as matters of trust administration. *Easter Enterprises*, 650 F.Supp at 201; *Iowa Road Builders*, Civil No. 84-471-A, slip. op. at 2. Consequently, the district court decided that the choice of law provision contained in the trust agreements, which specified the Illinois statute of limitations for actions for breach of written contracts, was "inapposite" to an action to enforce collective bargain-

ing agreements. *Easter Enterprises*, 650 F.Supp. at 201; *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 2. The district court decided that Iowa had the most significant relationship to the actions and that the most analogous Iowa statute of limitations was the two-year statute of limitations applicable to actions under the Iowa wage payment collection law, Iowa Code Ann. Sections 91A, 614.1(8), which specifically defines "wages" to include payments to employee benefit funds due under an agreement with the employer, *id.* § 91A.2(4)(c). *Easter Enterprises*, 650 F.Supp. at 201, citing *Teamsters Pension Trust Fund v. John Tinney Delivery Service, Inc.*, 732 F.2d 319, 322-23 (3d Cir. 1984) (*John Tinney*) (three-year statute of limitations for Pennsylvania wage payment and collection act), and *Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620, 625 (3d Cir. 1984) (*DeBolt Transfer*) (following *John Tinney* decision as controlling, without additional analysis); *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 3 (citing same 3d Cir. cases).

For reversal appellants argue the district court erred in characterizing these actions to collect unpaid contributions as actions to enforce the collective bargaining agreements. Appellants characterize these actions as actions for judicial enforcement of the trust agreements, which were incorporated by reference in the collective bargaining agreements or the participation agreements, or both, and not as labor disputes. Appellants thus argue the district court should have applied the statute of limitations for actions for breach of written contracts, pursuant to the Illinois choice of law provision in the trust agreements or, alternatively, pursuant to the law of the forum state.

In response IRB and Ace Lines argue that the district court's view of appellants' actions as involving labor disputes and enforcement of collective bargaining agreements was correct.

IRB and Ace Lines argue that because the statutory definition of "wages" specifically includes employer contributions to employee benefit funds, Iowa Code Ann. § 91A.2(4)(c), the district court correctly determined that an action under the Iowa wage payment collection law was "most analogous" to an action to collect delinquent contributions under ERISA, or the LMRA, for statute of limitations purposes. IRB and Ace Lines further argue that because they are not parties to the trust agreements for either the pension fund or the health and welfare fund, the only "written contracts" at issue in these actions are the collective bargaining agreements, not the trust agreements.

Appellants' complaints alleged claims for breach of the trust agreements pursuant to ERISA § 302(a), 29 U.S.C. § 1132(a).[2] This statute provides a basis for federal jurisdiction, and a federal forum, for these claims. *See Schneider Moving*, 466 U.S. at 366 n.2. Because an action to collect delinquent fund contributions states a federal cause of action, appellants' arguments about the choice of law provision in the trust agreements and conflicts of law principles, arguments which are premises upon diversity jurisdiction, are inapposite. *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1105 n.5 (6th Cir. 1986) (banc) (*Kraftco*), *cert. denied*, 107 S.Ct. 1291 (1987).

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[2]Appellants' complaints also cite LMRA § 301(a), 29 U.S.C. § 185(a). If the collective bargaining agreement does not incorporate the trust fund agreement by reference and the employer has not executed a participation agreement, then the trustees of the fund can sue the employer under LMRA § 301(a), 29 U.S.C. § 185(a), as third-party beneficiaries of the collective bargaining agreement. *Lewis v. Benedict Coal Co.*, 361 U.S. 459 (1960). On appeal, however, appellants argue that they seek enforcement of the trust agreements, not the collective bargaining agreements. Brief for Appellants at 22-24.

ERISA does not (nor does LMRA § 301(a), 29 U.S.C. § 185(a), however, contain a statute of limitations applicable to trustee actions to recover delinquent contributions.[3] "When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985) (footnote omitted) (statute of limitations applicable to 42 U.S.C. § 183 actions); *see also DelCostello*, 462 U.S. at 170-71 (hybrid § 301/breach of the duty of fair representation claims); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 703-04 (1966) (LMRA § 301 claims). Accordingly, we must determine the "most appropriate," *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975), or the "most analogous," *Board of Regents v. Tomanio*, 446 U.S. 478, 488 (1980), Iowa statute of limitations to apply to appellants' ERISA claims. In order to do so, we must first "characterize the essence of the claim in the pending case, and decide which state statute provides the most appropriate limiting principle." *Wilson v. Garcia*, 471 U.S. at 268.

> The characterization of [a federal claim] for statute of limitations purposes is derived from the elements of the cause of action, and Congress' purpose in providing it. These, of course, are matters of federal law. . . . Only the length of the limitations period, and closely related questions of tolling and application, are to be governed by state law.

Id. at 268-69 (footnote omitted); see also *UAW v. Hoosier Cardinal Corp.*, 383 U.S. at 706.

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[3]Statutory amendment would be desirable for the establishment of a uniform limitations period where, as here, the trust agreements and administration are multi-state.

> By adopting the statute governing an analogous cause of action under state law, federal law incorporates the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action. However, when the federal claim differs from the state cause of action in fundamental respects, the State's choice of a specific period of limitation is, at best, only a rough approximation of "the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."

Wilson v. Garcia, 471 U.S. at 271, *citing Johnson v. Railway Express Agency, Inc.*, 421 U.S. at 463-64. "[S]tate law is applied only because it supplements and fulfills federal policy, and the ultimate question is what federal policy requires." *UAW v. Hoosier Cardinal Corp.*, 383 U.S. at 709 (White, J., dissenting).

The choice here is between actions for breach of written contracts and actions under the wage payment collection law. The district court followed the analysis of the Third Circuit and held that the state cause of action to collect unpaid wages, which are defined by the statute of include contributions to employee benefit funds, was most analogous to the trustees' federal cause of action under ERISA to collect delinquent contributions. *Easter Enterprises*, 650 F.Supp. at 201, *citing John Tinney*, 732 F.2d at 322-23, and *DeBolt Transfer*, 741 F.2d at 625 (following *John Tinney* decision as controlling, without additional analysis); *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 3 (citing same 3d Cir. cases). However, for the reasons discussed below, we hold that the "most appropriate" characterization of trustee actions under ERISA to collect delinquent contributions for statute of limitations purposes is

as actions for breach of written contracts. *See, e.g., Trustees for Alaska Laborers-Construction Industry Health & Security Fund v. Ferrell,* 812 F.2d 512, 517 (9th Cir. 1987); Kraftco, *799 F.2d at 1105; Trustees of Operative Plasterers' Local Union Officers & Employees Pension Fund v. Journeymen Plasterers' Protective & Benevolent Society, Local Union No. 5,* 794 F.2d 1217, 1221-22 n.8 (7th Cir. 1986) *(Plasterers). Cf. Kraftco,* 799 F.2d at 1107-08 (LMRA § 301(a) actions); *IAM v. Allied Products Corp.,* 786 F.2d 1561, 1563 (11th Cir. 1986) (same); *Smith v. Kerrville Bus Co.,* 748 F.2d 1049, 1051 (5th Cir. 1984) (same); *O'Hare v. General Marine Transport Corp.,* 740 F.2d 160, 167-68 (2d Cir. 1984) (same), *cert. denied,* 469 U.S. 1212 (1985).

We do not find dispositive the state statutory definition of "wages" or state case law applying the state wage payment collection statute, *see, e.g., Teamsters Local Union No. 90 v. White,* 333 N.W.2d 839 (Iowa 1983). State authority is helpful, but the characterization of the federal claim for purposes of determining which state cause of action, and corresponding state statute of limitations, is most analogous is "ultimately a question of federal law." *UAW v. Hoosier Cardinal Corp.,* 383 U.S. at 706; *see also Wilson v. Garcia,* 471 U.S. at 270 & n.22.

We perceive fundamental differences between the state and federal claims that make characterization of appellants' claim under ERISA for delinquent contributions as an action under the state wage payment collection law unreasonable and inconsistent with federal labor and pension policy.[4] Although both

[4]Appellants' cause of action is a federal one and, to the extent that state law conflicts with either ERISA or LMRA (or the National Labor Relations Act, 29 U.S.C. § 151 et seq.), it is pre-empted. *Cf. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985); National Metalcrafters v.McNeil,* 784 F.2d 817, 826-829 (7th Cir. 1986) (action for vacation pay under Illinois wage payment law held pre-empted by federal labor law in context of collective bargaining agreement).

types of actions seek the recovery of employment benefits, wage payment collection actions involve attempts by employees, or the state commissioner of labor, to obtain employment benefits directly from the employer. In general, a dissatisfied employee will realize when the employer has failed to afford him or her a particular employment benefit and can then promptly initiate an action against the employer, or file a complaint with the state commissioner of labor, under the state wage payment collection law. In contrast, the trustees of employee benefit trust funds act as fiduciaries of the beneficiaries of the funds. *See Schneider Moving*, 466 U.S. at 372-76 & n.13, *citing NLRB v. Amax Coal Co.*, 453 U.S. 322, 337 (1981). The trustees may not discover underpayments until a beneficiary applies for benefits, which can be some years after the employment relationship has ended. Given the self-reporting system of employer contributions to the funds, the trustees may not discover a particular employer owes delinquent contributions unless and until they conduct an audit. *See Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559 (1985) (*Central Transport*).

More importantly, however, we think that the Third Circuit's position, which was followed by the district court in the present case, must be reconsidered in light of the Supreme Court's subsequent treatment of trustee actions under ERISA in *Schneider Moving and Central Transport*. In each case, the Supreme Court distinguished actions brought by the trustees of employee benefit trust funds to enforce the trust agreements, whether brought directly under trust agreements or indirectly as third-party beneficiaries under collective bargaining agreements, from actions brought by either unions or employers to enforce collective bargaining agreements, and clearly characterized trustee actions under ERISA as actions

to enforce the trust agreements and not as actions to enforce the collective bargaining agreements. *Central Transport*, 472 U.S. at 569-82; *Schneider Moving*, 466 U.S. at 371-76; *see also NLRB v. Amax Coal Co.*, 453 U.S. at 337.

In our view, the district court and the employers placed too much emphasis upon the "labor dispute" aspects of this litigation. In the typical "labor dispute," labor and management may resort to the use of economic weapons that will disrupt "labor peace." In those situations, the courts often defer to the "relatively rapid final resolution of labor disputes favored by federal law," *DelCostello*, 462 U.S. at 168, and require arbitration, *see Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578, 582-83 (1960), or apply relatively short statutes of limitation, *see DelCostello*, 462 U.S. at 161-70, in order to promote the objectives of collective bargaining and to restore labor peace. In comparison, however, these appeals involve disputes between the trustees and the employer over fund contributions in which the parties are unlikely to resort to the use of economic weapons, disputes that are essentially over matters of trust administration. As noted in *Schneider Moving*, 466 U.S. at 372 & n. 13, disputes between the trustees and the employer over fund administration, like the "disputes between benefit fund trustees over the administration of the trust cannot, as can disputes between parties in collective bargaining, lead to strikes, lockouts, or other exercises of economic power. *NLRB v. Amax Coal Co.*, 453 U.S. at 337. "Although the employer has economic weapons at its disposal, they would serve little purpose in disputes with the trustees of employee-benefit funds. *Schneider Moving*, 466 U.S. at 372 n.13.

We hold the state cause of action for breach of written contracts, and the applicable statute of limitations, is most analogous to trustee collection actions under ERISA. *See Fer-*

rell, 812 F.2d at 517; *Kraftco*, 799 F.2d at 1105; *Plasterers*, 794 F.2d at 1221-22 n.8[5] Appellants' actions are not barred under Iowa's ten-year statute of limitations for actions for breach of written contracts. Accordingly, the orders of the district court are reversed and the cases are remanded to the district court for further proceedings consistent with this opinion.

A true copy.

ATTEST:
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[5]We also reject application of the six-month period provided in 29 U.S.C. § 160(b) for unfair labor practice charges and applied to hybrid § 301/breach of the duty of fair representation claims in *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151 (1983). *See Trustees for Alaska Laborers-Constr. Indus. Health & Sec. Fund v. Ferrell*, 812 F.2d 512, 517 (9th Cir. 1987); *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1105-07 (6th Cir. 1986) (bnac), *cert. denied*, 107 S.Ct. 1291 (1987).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al., Plaintiffs, vs. EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., Defendants	)	CIVIL NO. 83-687-B ORDER

This matter comes before the Court once again, this time on plaintiff's motion to clarify the Court's rulings of October 11, 1985, and March 7, 1986. In an effort to set the record straight, the Court will review the history of the procedural aspects of this litigation.

Plaintiffs filed their original complaint in this action on December 12, 1983. The original complaint consists of two counts alleging inaccuracies in defendant's record keeping and administration of certain benefit plans. The requested relief totals approximately $88,500.00.

On November 8, 1984, plaintiffs filed a motion for leave to amend their complaint. The proposed "First Amended Complaint" was submitted to the Court on December 6, 1984. The "First Amended Complaint" consists of two counts, designated "Count I" and "Count II." Count I alleges in essence that defendant excluded a substantial number of employees from coverage under the benefit plans. Count II alleges that defendant has

withdrawn from the pension plan and owes a substantial withdrawal payment. The relief requested in the proposed amended complaint totals approximately $1.15 million. No mention is made of the claims set forth in plaintiff's original complaint, for that reason, the amended complaint could be misconstrued as a substituted complaint.

On January 23, 1985, United States Magistrate R. E. Longstaff ruled that the claims in Count I of the amended and substituted complaint are confined by a two-year statute of limitations. Magistrate Longstaff denied the motion to amend insofar as it sought to add the new Count II, and he ordered plaintiffs to file a revised amended complaint within 20 days. No such complaint has been filed.

On October 11, 1985, the Court affirmed the Magistrate's application of the two-year statute of limitations, but found that Count I of the amended complaint alleged a new cause of action and therefore could not relate back to the time of the original complaint. Thus, plaintiff's claim in the proposed Count I is limited to losses incurred no earlier than two years before the proposed amended complaint was submitted. On March 7, 1986, the Court denied plaintiff's motion to alter or amend its October 11, 1985, ruling.

Plaintiffs now ask the Court to clarify the effect of its previous orders on the claims asserted in plaintiffs' original complaint. They suggest that the Court's orders appear to bar all claims not accruing within two years prior to December 6, 1984.

The Court does not understand the need for clarification in this matter, unless it was caused by a confusion of plaintiffs' "First Amended Complaint" for an amended and substituted complaint. In any event, this Court views and has always viewed plaintiffs' amended complaint as just that and not as a substituted complaint. Accordingly, none of the previous rulings by Magistrate

Longstaff or by this Court in any way affected plaintiffs' original complaint. The claims asserted in the original complaint are not confined to the two years preceding December 6, 1984.

To avoid the possibility of future confusion, plaintiffs will be directed to file an amended and substituted complaint incorporating all of their remaining claims.

IT IS SO ORDERED.

Signed this 11th day of June, 1986.

/s/ W. C. Stuart, Judge
SOUTHERN DISTRICT OF IOWA

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al.,	)	
	)	CIVIL NO. 83-687-B
Plaintiffs,	)	
vs.	)	
	)	
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	ORDER
	)	
Defendants	)	

Plaintiffs have filed a motion to alter or amend the Court's Order dated October 11, 1985. Having carefully considered plaintiffs' arguments, the Court has determined not to alter or amend its earlier Order. In particular, the Court finds that *Schneider Moving & Storage Company v. Robbins*, 466 U.S. 364 (1984), does not establish, as plaintiffs assert, that this action is more in the nature of a suit under the trust agreements than under the collective bargaining agreement. The fact that the trust agreements require defendant to make contributions according to the terms of the collective bargaining agreement does not make this a suit under the trust agreements. The plain language of the trust agreements —"This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois. . . ."— suggests that application of Illinois law is limited to the trust agreements and does not extend to the collective bargaining agreement. The Court also finds that, contrary to plaintiffs' assertion, it is not required to give deference to the Trustees' interpretation of the trust agreements. Finally, the Court con-

tinues to believe that the State of Iowa has the most significant relationship to the limitations question and that the two-year statute of Iowa Code § 614.1(8) is the most analogous Iowa statute of limitations.

Plaintiffs also ask the Court to clarify its earlier Order so as to provide that "plaintiffs are entitled to claim $56,011.60 for damages to the Pension Fund and $32,671.59 for damages to the Health and Welfare Fund for unpaid contributions accruing between December 12, 1981, and December 12, 1983, ..." The Court finds that it would be inappropriate to make such a "clarification" at this time and under the present record. The Court will, however, grant plaintiffs' request to clarify that the applicable limitations period is tolled as of December 6, 1984, the date of plaintiffs' proposed "First Amended Complaint."

Finally, the Court agrees with plaintiffs that its Order of October 11, 1985, involves a controlling question of law as to which there is substantial ground for differences of opinion. An immediate appeal from the Order may materially advance the ultimate termination of the litigation. *See* 28 U.S.C. § 1292(b).

IT IS SO ORDERED.

Signed this 6th day of March, 1986.

/s/ W. C. Stuart, Judge
SOUTHERN DISTRICT OF IOWA

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al.,	)	
	)	CIVIL NO. 83-687-B
Plaintiffs,	)	
vs.	)	
	)	
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	MEMORANDUM
	)	
Defendants	)	

This is an action for failure to make contributions to union trust funds. Jurisdiction is premised on the Employee Retirement Income Security Act (ERISA), as amended by the Multi-Employer Pension Plan Amendments Act (MEPPAA), 29 U.S.C. § 1132. Plaintiffs, none of whom are citizens of Iowa, are trustees of the funds. Defendant, d/b/a Ace Lines, Inc., is an Iowa corporation with its principal place of business in Iowa.

This matter comes before the Court on plaintiffs' appeal of an Order by United States Magistrate R. E. Longstaff partially denying plaintiffs' motion to amend their complaint. The issue presented is whether the Magistrate was correct in holding that the claims asserted in Count I of the amended complaint are confined by the two-year statute of limitations contained in § 614.1(8) of the Iowa Code.

Both sides agree that in cases such as this, in which the applicable federal statutes prescribe no limitations period, the Court

ordinarily must borrow "the most closely analogous statute of limitations under state law." *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151, 158 (1983). However, when adoption of state statutes would be at odds with the purpose or operation of federal substantive law, timeliness rules have been drawn from federal law. *Id.*, at 162.

Plaintiffs contend that the appropriate statute of limitations is Illinois' 10-year statute for written contracts. They acknowledge that the Court must apply Iowa choice-of-law rules to determine which State's substantive law should be used. Iowa has adopted the "most significant relationship" analysis for resolving choice-of-law questions. See Restatement (Second) Conflicts of Law. Under § 187 of the Restatement, the law of the state chosen by the parties to govern their contractual rights ordinarily will be applied. The trust agreements, which establish the trust funds and give plaintiffs the authority to enforce defendant's contribution obligations, provide that the agreements "shall in all respects be construed according to and governed by the laws of Illinois." Plaintiffs argue that, in accordance with § 187, Illinois law should provide the limitations period for this action. They maintain that the most analogous Illinois statute of limitations is the 10-year statute for actions on written contracts. Ill. Rev. Stat. Ch. 110 § 13-206.

In response, defendant asserts that the language in the trust agreements requiring resort to Illinois law is of no relevance because the present action is one to enforce the collective bargaining agreements. The latter contain no such language. Defendant further asserts that, because § 187 of the Restatement has no bearing on this matter, a "most significant relationship" analysis results in application of Iowa law. In particular, defendant posits the applicability of Iowa Code § 614.1(8), which establishes a limitations period of two years for actions to recover "wages," defined to include payments to employee benefit funds. Iowa Code § 91A.2(4).

Although plaintiffs' right to institute this lawsuit is derived from ERISA and the Trust Agreements, the gravamen of plaintiffs' complaint is defendant's alleged failure to comply with its obligations under the collective bargaining arguments. Consequently, the Court agrees with defendant that the Illinois law proviso of the trust agreements is inapposite. The Court also agrees that Iowa has the most significant relationship to this action and that the most analagous Iowa statute of limitations is the two-year statute found at § 614.1(8). *Teamsters' Local Union No. 90 v. J.C. White*, 333 N.W.2d 839 (Iowa 1983); *Teamsters Pension Trust Fund v. John Tinney Delivery Service*, 732 F.2d 319, 323 (3rd Cir. 1984). Finally, The Court believes that a two-year limitations period for actions to collect delinquent employee benefit plan contributions is no more too short to comport with congressional policy than a 10-year period would be too long. *See Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620 (3rd Cir. 1984).

The Court has considerable foreboding about the financial soundness of trust funds when there is no relationship between payments into the funds and benefits paid from the funds. The Court recognizes that a two-year statute of limitations places added burdens on the trustees, who are charged with enforcing a voluntary payment system but who are restricted in their use of costly annual audits. However, the Court also recognizes the problems created for labor and management when the trustees, who are not parties to the collective bargaining agreements, interpret the agreements in a manner that could result in the imposition of financial burdens not contemplated by the parties at the time the agreements were reached. It would be disruptive of labor peace and anomolous to allow a third-party beneficiary a longer period of time to sue under a collective bargaining agreement than is available to the parties to the contract. Of course, if fraud is involved, the trustees would not be confined to the two-year period of limitations.

There remains the question of whether plaintiffs' amended complaint should relate back to the date this action was originally filed. Defendant contends that there should be no relation back because, while plaintiffs' initial complaint was concerned merely with the accuracy of defendant's recordkeeping, the amended complaint alleges that a substantial group of employees was improperly excluded from coverage under the benefit plans. This, defendant urges, makes plaintiffs' new complaint essentially a new lawsuit. Again, the Court is constrained to agree with defendant. Under Rule 15(c) of the Federal Rule of Civil Procedure, a claim in an amended pleading will relate back to the date of the original pleading if the claim arose out of the same conduct, transaction, or occurrence. Here, although both the original and amended complaints allege noncompliance with the contribution requirements of the employee benefit plans, the Court is unwilling to say that defendant had fair notice of plaintiffs' claim for expanded coverage. The amount sought by plaintiff as relief soared from approximately $88,500 to $1.15 million. Part of this increase is attributable to an ERISA penalty provision that effectively rewards plaintiffs for their delay in filing the amended complaint. See 29 U.S.C. § 1132(g)(2). Under the circumstances, the Court will restrict plaintiffs' claim in Count 1 to losses incurred no earlier than two years before filing of the amended complaint.

Except as thus modified the Magistrate's Order of January 23, 1985, is affirmed.

IT IS SO ORDERED.

Signed this 11th day of October, 1985.

/s/ W. C. Stuart, Judge
SOUTHERN DISTRICT OF IOWA

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al., Plaintiffs, vs. EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., Defendants	CIVIL NO. 83-687-B MOTION FOR LEAVE TO AMEND COMPLAINT AND FOR EXTENSION OF DEADLINES

COMES NOW the Plaintiffs, and move the Court for leave to file their first amended complaint; for an order extending deadlines for pleadings, discovery, witnesses, and motions; and scheduling a pretrial conference. In support of their motion, Plaintiffs state:

1. This action was filed on December 12, 1983, and answered on or about January 26, 1984.

2. A Scheduling Conference Order was issued on March 23, 1984 establishing a pleading and discovery deadline of November 1, 1984.

3. After the Scheduling Conference Order, pursuant to an agreement of the parties, the parties agreed that the Plaintiffs' auditors would conduct an audit of the records of the Defendant and attempt to resolve the dispute through settlement.

4. During the course of the audit, many factual issues were

resolved; however, several interpretative issues arose which have lead to substantial disputes between the parties.

5. Prior to the November 1, 1984 deadline, counsel for Plaintiffs telephoned Magistrate Longstaff and indicated that the audit was nearly complete, and orally requested that the deadlines be postponed until the results of the audit were obtained by the parties. Counsel for Plaintiffs reported this conversation to counsel for Defendants.

6. On November 7, 1984, the Plaintiffs' auditors, counsel for Plaintiffs, representatives of the Defendant, and counsel for Defendant met and discussed the results of the audit. Among other documents, a form entitled "Preliminary Debt Audit Adjustments" was discussed. This form indicated that the Defendant in fact owed the Central States Southeast and Southwest Areas Pension and Health and Welfare Funds approximately $1 million. A copy of this schedule is attached hereto. [Not included in this Appendix]

7. Plaintiffs' auditors indicated that the Defendant could have thirty (30) days to present evidence to the Plaintiffs' trust funds disputing these amounts.

8. Unless this dispute is resolved within thirty (30) days, Plaintiffs request leave to amend their Complaint to reflect additional amounts claimed from Defendant. If such leave is granted, counsel for Plaintiffs believes that the Court should set a pre-trial conference for the purpose of establishing new deadlines.

9. The amounts uncovered during the audit are substantial, and would have a material impact on the ability of the Plaintiffs' trust funds to pay pension and health and welfare benefits to participants in the funds. Plaintiffs were not aware of these additional claims until the audit was performed.

10. In light of the policy that amendments should be freely allowed, Plaintiffs believe that substantial justice requires that their Motion for Leave to Amend Complaint be granted.

WHEREFORE, Plaintiffs pray that their Motion for Leave to Amend Complaint be granted; that they be allowed forty-five (45) days within which to file such amendment; and that the Court set a pre-trial conference for the purpose of establishing new deadlines.

ADAMS, HOWE & ZOSS, P.C.
/s/ Paul A. Zoss
620 Hubbell Building
Des Moines, IA 50309
Telephone: (515) 244-2329

ATTORNEYS FOR PLAINTIFFS

Copy to:

David H. Goldman
Black, Reimer & Goldman
550 39th Street, Suite 300
Des Moines, IA 50312

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al., Plaintiffs, vs. EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., Defendants	)	CIVIL NO. 83-687-B AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF POLK)

I, Paul A. Zoss, upon oath do state:

1. That I have at all times been attorney of record for the Plaintiffs herein.

2. On November 7, 1984, I attended a meeting at the Defendant's business office with officials representing the Plaintiffs and the Defendant and with David Goldman, attorney for the Defendant. At the meeting, a copy of the document attached to Plaintiff's Motion For Leave to Amend the Complaint and For Extension of Deadlines was distributed. That document contains the results of an audit of the Defendant's books and records conducted by Plaintiff's auditors in 1984.

3. On November 8, 1984, I prepared and caused to be filed the Motion for Leave to Amend the Complaint and for Extensions of Deadlines. A copy of the proposed First Amended Com-

plaint was not attached to the Motion because extensive investigation and research was necessary before the First Amended Complaint could be prepared.

4. On December 6, 1984, I delivered a copy of the First Amended Complaint to the Office of the Clerk of the United States District Court for the Southern District of Iowa. The Clerk would not file the First Amended Complaint because leave of Court had not been granted, but indicated that the First Amended Complaint would be delivered to the Magistrate. The Magistrate acknowledged receipt of the proposed First Amended Complaint in an Order dated December 13, 1984.

5. Attached to this Affidavit is a genuine, true and accurate copy of the proposed First Amended Complaint delivered to the Clerk's office on December 6, 1984.

/s/ Paul A. Zoss

Subscribed and sworn to before me on this 21st day of October, 1985.

/s/ Cindy Hughes
Notary Public, State of Iowa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, EARL L. JENNINGS, JR., HOWARD McDOUGALL, ROBERT J. BAKER, R. V. PULLIAM, SR., and ARTHUR H. BUNTE, JR., Trustees of the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,	)	Civil No. 83-687-B
Plaintiffs,	)	
vs.	)	[PROPOSED] FIRST AMENDED COMPLAINT
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., ACE ALKIRE FREIGHT LINES, COMPANY TRUCK DIVISION, and SUNSET DIVISION,	)	
Defendant.	)	

COMES NOW the Plaintiffs, by their attorney, Adams, Howe & Zoss, P.C., and for their cause of action against the Defendant states:

COUNT I

1. Plaintiffs are trustees of the Central States, Southeast and Southwest Areas Pension Fund (hereinafter referred to as "Pension Fund") and of the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to as "Health and Welfare Fund"), which are, individually, multi-

employer employee benefit plans within the meaning of § 3(1), (2), (3), and (37), § 502 and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MEPPAA) [29 USC § 2002(1) [sic], (2), (3), and (37), § 1132 and § 306, PL 96-364], and bring this action on behalf of themselves, the participants and the beneficiaries of these plans.

2. The Defendant, Easter Enterprises, Inc., d/b/a Ace Lines, Inc., Ace Alkire Freight Lines, Company Truck Division, Sunrise Division and Sunset Division, is an Iowa corporation with its principal place of business in the State of Iowa, and is engaged in the business of transporting goods in interstate commerce as a common carrier.

3. Jurisdiction of this Court is founded upon § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 185(a)]; § 502 of ERISA [29 USC § 1132]; and § 306 of MEPPAA in that Plaintiffs are aggrieved by the Defendant's failure to honor and continued refusal to comply with certain terms of collective bargaining agreements to which it is bound as well as the trust plans and trust agreements of the Pension Fund and the Health and Welfare Fund, in violation of Federal law and of the laws of the State of Iowa. The matter in controversy is between a Defendant who is a citizen of the State of Iowa and the Plaintiffs who are all citizens of states other than the State of Iowa.

4. Defendant is an employer and a party in interest in an industry affecting commerce within the meaning of § 3(5), (11), (12), and (14) of ERISA [29 USC § 1002(5), (11), (12), and (14)], § 3 of MEPPAA and the Labor Management Relations Act of 1947 (29 USC § 151 *et seq.*).

5. At all times relevant hereto, the Defendant was a party to and agreed to abide by the terms of collective bargaining agreements between itself and various locals of the International

Brotherhood of Teamsters, Chauffeurs, Warehousers and Helpers of America (hereinafter referred to as "Teamster" locals), which are labor organizations that represent, for purposes of collective bargaining, certain employees of Defendant and employees of other employers in industries affecting interstate commerce within the meaning of § 2(5), § 9(a), and § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 151 *et seq.*].

6. In 1976, Defendant and Teamster Local No. 147 executed or became bound by the terms of the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement, and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1976 through March 31, 1979.

7. On or about February 10, 1977, R. R. Wynant, Vice President and authorized agent of Defendant, and Charles T. Madden, Secretary-Treasurer and authorized agent of Teamster Local No. 544, executed the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1976 through March 31, 1979. Genuine copies of the signature pages of these Agreements are attached hereto as Exhibit "A".

8. The 1976 to 1979 National Master Freight Agreement required, in Article 2, Section 5, that any riders to the Agreement be submitted to the Conference Joint Area Committee for approval.

9. No riders to the National Master Freight Agreement for the period April 1, 1976 through March 31, 1979 were submitted by the Defendant to the Conference Joint Area Committee for approval under the provisions of Article 2, Section 5 of the National Master Freight Agreement, nor did the Committee approve any riders applicable to Defendant.

10. For certain of its employees covered by the 1976 to 1979 National Master Freight Agreement, Defendant failed to make contributions or made substandard contributions to the Pension Fund or to the Health and Welfare Fund.

11. On or about January 8, 1980, Richard Easter, President and authorized agent of Defendant, and Vernon Bennett, President and authorized agent of Teamster Local No. 147, executed the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1979 through March 31, 1982. Genuine copies of the signature pages of these Agreements are attached hereto as Exhibit "B".

12. On or about December 18, 1979, Richard Easter, President and authorized agent of Defendant, and Charles T. Madden, Secretary-Treasurer and authorized agent of Teamster Local No. 544, executed the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1979 through March 31, 1982. Genuine copies of the signature pages of these Agreements are attached hereto as Exhibit "C".

13. The following provisions are included within the 1979 to 1982 National Master Freight Agreement:

> "ARTICLE 1. *Parties to the Agreement.*
>
> Section 1. *Employers Covered.* The Employer consists of Associations, members of Associations who have given their authorization to the Associations to represent them in the negotiation and/or execution of this Agreement and Supplemental Agreements, and *individual Employers who become signatory to this Agree-*

ment and Supplemental Agreements as hereinafter set forth . . . . (Emphasis supplied)

"ARTICLE 2. *Scope of Agreement.*

Section 1. *Master Agreement.* The execution of this National Master Freight Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to work performed within the classifications defined and set forth in the Agreements supplemental hereto.

Section 2. *Supplements to Master Agreement.*

(a) There are several segments of the trucking industry covered by this Agreement and for this reason Supplemental Agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement.

All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements".

* * *

(d) The jurisdiction covered by the National Master Freight Agreement and its various Supplements thereto includes, without limitation, stuffing, stripping, loading and discharging of cargo or containers. . . .

* * *

Section 3.Non-covered Units.

* * *

(b) *Additions to Operations-Over-The-Road and Local Cartage Supplemental Agreement.* Notwithstanding the foregoing paragraph, the provisions of the National Master Freight Areement and the applicable over-the-road and local cartage Supplemental Agreements shall be applied, without evidence of Union representation of the employees involved, to all subsequent additions to, and extensions of, current operations which adjoin and are utilized as part of such current operation.

* * *

Section 4. *Single Bargaining Unit.* The employees, unions, employers and associations covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit and contract. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaining units.

This National Master Agreement applies to city and road operations, and other classifications of employment authorized by the signatory employers to be represented by Trucking Management, Inc. and by other employers and Associations participating in national collective bargaining. The common problems and interests, with respect to basic terms and conditions of employment, have resulted in the creation of the National Master Freight Agreement and the respective Supplement.

Section 5. *Riders.* Riders to this Agreement providing for better wages, hours, and working conditions for employees which have been negotiated by Local Unions and Employers affected and put into effect, shall

be continued, and shall be improved wherever required by the 1979 amendments to this Agreement except as to those better Riders which by agreement of the parties are subject to mutual agreement and adjustment on the supplemental area level. Riders, as improved, shall be submitted to the Conference Joint Area Committee for approval. If the parties cannot agree on the terms of such Rider, the Conference Joint Area Committee may establish such terms.

No new Riders to this Agreement shall be negotiated unless approved by the Conference Joint Area Committee, if confined to that Conference Area, or by the National Grievance Committee if applicable to more than one Conference Area.

Riders to this Agreement and to Supplements thereto between Local Unions and Employers that do not meet the standards set forth in the National Master Agreement and Supplements thereto, shall be continued pending negotiations for amendment of such Riders which negotiations shall be conducted and concluded within ninety (90) days after May 18, 1979. In the event no agreement is concluded, the matter shall be referred during such period to the Conference Joint Area Committee, if confined to the Conference Area, or to the National Grievance Committee if applicable to more than one Conference Area, for final disposition. Any substandard Riders not submitted, or submitted and not approved, shall be null and void.

The Conference Joint Area Committee or the National Grievance Committee as provided shall resolve all disputes on Riders or Supplements by either establishing the terms of such Riders or by modifying them completely. However, wage and monetary mat-

ters negotiated in this Agreement shall become effective April 1, 1979.

ARTICLE 3. *Recognition, Union Shop and Check-Off.*

* * *

Section 2. *Probationary and Casual Employees.* A new employee shall work under the provisions of this Agreement but shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. The Union and the Employer may agree to extend the probationary period for no more thirty (30) days but the probationary employee must agree to such extension in writing.

After thirty days, the employee shall be placed on the regular seniority list. In case of discipline within the thirty-day period, the Employer shall notify the Local Union in writing.

Any employee hired as a casual or part-time worker shall not become a seniority employee under these provisions where it has been agreed by Employer and Union that he was hired for casual or part-time work. The words "casual" or "part-time" as used herein are meant to cover situations such as replacement for absenteeism.

Any employee hired as a casual or part-time worker shall not become a seniority employee until he meets the requirements of the appropriate Supplemental Agreement under which he is employed.

ARTICLE 6.

* * *

Section 2. *Extra Contract Agreements.* The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

ARTICLE 22.

* * *

Section 2.[An owner operator's] compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

* * *

ARTICLE 32. *Subcontracting.*

Section 1. For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services of the kind, nature or type covered by, presently performed, or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other plant, person or nonunit employees, unless otherwise provided in this Agreement.

The Employer may subcontract work when all of his regular employees are working, except that in no event shall road work presently performed or runs established during the life of this Agreement be farmed out. No dock work shall be farmed out except for existing situa-

tions established by agreed to past practices. Overflow loads may be delivered by drivers other than the Employer's employees provided that this shall not be used as a subterfuge to violate the provisions of this Agreement. Loads may also be delivered by other agreed to methods or as presently agreed to. Owner-Operators performing subcontracted work which is permitted herein shall receive no less than the wages, hours and general working conditions of this Agreement and the applicable Supplement.

The normal, orderly interlining of freight for peddle on occasional basis, where there are parallel rights, and when not for the purpose of evading this Agreement may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this Agreement.

The interlining of freight or a division or tariff, for any purpose, including local cartage, dock, hostling and delivery is included within the term subcontracting as used in this Article and may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this Agreement.

In the event that an Employer signatory to this agreement utilizes personnel on a regular basis which has been supplied by a labor contractor, as such to perform subcontracted work permitted by this Agreement, such personnel shall receive the wages, hours and general working conditioins provided herein.

Section 2. Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step

of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.

ARTICLE 33. *Cost-of-Living*

All employees subject to this Agreement shall be covered by the provisions of a cost-of-living allowance, as set forth in this Article.

* * *

ARTICLE 39. *Duration.*

Section 1. The Agreement shall be in full force and effect from April 1, 1979, to and including March 31, 1982, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to March 31, 1982 or March 31st of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

Section 3. Revisions agreed upon or ordered shall be effective as of April 1, 1982 or April 1st of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree therein.

Section 4. In the event of an inadvertent failure by either party to give the notice set forth in Sections 1 and 2 of this Article, such party may give such notice at any time prior to the termination or automatic renewal date of this Agreement. If a notice is given in accordance with the provisions of this Section, the expiration date of this Agreement shall be the sixty-first (61st) day following such notice."

14. The Central States Area Over-the-Road Motor Freight Supplemental Agreement for April 1, 1979 through March 31, 1982 contains the following provisions:

ARTICLE 65. *Health and Welfare Benefits*

Effective April 1, 1979, the Employer shall contribute to a fund, which is to be administered jointly by the parties, the sum of $33.50 per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more.

Effective April 1, 1980, the weekly contribution shall be increased to $36.50.

Effective April 1, 1981, the weekly contribution shall be increased to $39.50.

By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks.

If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Health and Welfare Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Health and Welfare Fund, regardless of whether the equipment rental is at the minimum rate or more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Health and Welfare Fund must be made for each week of each regular employee, even though such employee may work only part-time under the provisions of this Agreement, including weeks where work is performed for the Employer but not under the provisions of this Agreement, and although contributions may be made for those weeks into some other Health and Welfare Fund.

Contributions shall be made for any regular employee on lay-off who is worked one (1) day in any week for any reason.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employer shall pay the full weekly contribution for that work week.

Employers presently making payments to the Central States, Southeast and Southwest Areas Health and Welfare Fund, and Employers who may subsequently begin to make payments to such Fund, shall continue to make such payments for the life of this Agreement. Action on delinquent contributions may be instituted by either the Local Union, the Area Conference, or the Trustees. Employers who are delinquent must also pay all attorneys' fees and costs of collection.

ARTICLE 66. Pensions

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST and SOUTHWEST AREAS PENSION FUND the sum of Forty One Dollars ($41.00) per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more. Effective April 1, 1980, the weekly contributions shall be increased to Forty Six dollars ($46.00). Effective April 1, 1981, the weekly contribution shall be increased to Fifty One dollars ($51.00).

This fund shall be the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. There shall be no other pension fund under this Agreement for operations under this Agreement or for operations under the Southern Conference Area Agreements to which Employers who are party to this Agreement are also parties.

By the execution of this Agreement, the Employer authorizes the Employer's Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Pension Fund, regardless of whether the equipment rental is at the minimum rate or more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Pension Fund must be made for each week on each regular employee, even though such employee may work only part-time under the provisions of this Agreement, including

weeks where work is performed for the Employer but not under the provisions of this Agreement, and although contributions may be made for those weeks into some other pension fund. Contributions shall be made for any regular Employee on layoff who is worked one (1) day in any week for any reason.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employee shall pay the full weekly contribution for that work week.

Effective April 1, 1979, the Employer shall contribute to the Central States, Southeast, and Southwest Areas Pension Fund the sum of eight dollars ($8.00) for each tour of duty worked by each casual and/or probationary employee, until such time as such employee accrues seniority in accordance with the contract.

Action for delinquent contributions may be instituted by either the Local Union, the Area Conference or the Trustees. Employers who are delinquent must all pay all attorneys' fees and costs of collection.

15. The Central States Area Local Cartage Supplemental Agreement for April 1, 1979 through March 31, 1982 contains the following provisions:

ARTICLE 54. *Health and Welfare Benefits*

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND, which is to be administered jointly by the parites, the sum of thirty-three dollars and fifty cents ($33.50) per week for each employee

covered by this Agreement who has been on the payroll thirty (30) days or more. Effective April 1, 1980, the weekly contribution shall be increased to thirty-six dollars and fifty cents ($36.50). Effective April 1, 1981, the weekly contribution shall be increased to thirty-nine dollars and fifty cents ($39.50).

Employers presently making payments to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND and Employers who may subsequently begin to make payments to such Fund, shall continue to make such payments for the life of this Agreement.

By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required con-

tributions into the Health and Welfare Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Health and Welfare Fund, regardless of whether the equipment rental is at the minimum rate or more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Health and Welfare Fund must be made for each week on each regular employee even though such employee may work only part time under the provisions of this Agreement, including weeks where work is performed for the Employer but not under the provisions of this Agreement,and although contributions may be made for those weeks into some other health and welfare fund.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employer shall pay the full weekly contribution for that work week.

Contributions shall be made for any regular employee on layoff who is worked one (1) day in any week for any reason.

Action for delinquent contributions may be instituted by either the Local Union, the Area Conference or the Trustees.

Employers who are delinquent must also pay all attorney's fees and costs of collections.

ARTICLE 55. *Pensions*

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST and SOUTHWEST AREAS PENSION FUND the sum of forty-one dollars ($41.00) per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more. Effective April 1, 1980, the weekly contributions shall be increased to forty-six ($46.00) dollars per week. Effective April 1, 1981, the weekly contribution shall be increased to fifty-one dollars ($51.00)

This fund shall be the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. There shall be no other pension fund under this Agreement for operations under this Agreement or for operations under the Southern Conference Areas Agreements to which Employers who are party to this agreement are also parties.

By the execution of this Agreement, the Employer authorizes the Employer's Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If the employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions un-

til such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

If any employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Pension Fund, regardless of whether the equipment rental is at the minimum rate of more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Pension Fund must be made for each week, on each regular employee, even though such employees may work only part-time under the provisions of this Agreement, including weeks where work is performed for the Employer but not under the provisions of this Agreement, and although contributions may be made for those weeks into some other pension fund. Contributions shall be made for any regular Employee on lay-off who is worked one (1) day in any week for any reason.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employer shall pay the full weekly contribution for that work week.

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND the

> sum of eight dollars ($8.00) for each tour of duty worked by each casual and/or probationary employee, until such time as such employee accrues seniority in accordance with the contract. Action for delinquent contributions may be instituted by either the Local Union, the Area Conference or the Trustees. Employers who are delinquent must also pay all attorney's fees and costs of collection.

16. The Employer's Associations which were parties to the 1979 to 1982 National Master Freight Agreement entered into the Trust Agreements establishing the Pension Fund and the Health and Welfare Fund, as authorized by the Supplements to the National Master Freight Agreement, and thereby ratified all actions already taken or actions taken thereafter by the Trustees within the scope of their authority.

17. On August 23, 1979, Local 147 and Defendant executed a document identified as a "rider" to the "National Master Freight Agreement Central States Over-the-Road Supplement" for Defendant's "Company Truck Division". A genuine copy of the "rider" is attached hereto as Exhibit "D" and incorporated herein.

18. The following terms were contained within this document:

> "2. Employees covered by this Rider will receive the same Health and Welfare contributions as provided for in the National Master Freight Agreement.
>
> 3. A Pension program will be established by the company with "Summit National Life Insurance Company" to provide for Life Insurance and a vested pension fund."

19. On September 26, 1979, Local 147 and Defendant executed a document identified as a "rider" to the "National Master Freight Agreement Central States Over-the-Road Supplement" for Defendant's owner-operators hired before April 1, 1979. A genuine copy of the "rider" is attached hereto as Exhibit "E" and incorporated herein.

20. The following term was contained within this document:

> "4. The Company agrees to make Health and Welfare and Pension contributions for each eligible employee upon completion of a sixty (60) day trial period according to the terms of the National Master Freight Agreement."

21. On September 26, 1979, Local 147 and Defendant executed a document identified as a "rider" to the "National Master Freight Agreement Central States Over-the-Road Supplement" for Defendant's "Sunrise Division" (i.e. owner-operators hired on or after April 1, 1979). A genuine copy of the "rider" is attached hereto as Exhibit "F" and incorporated herein.

22. The following term was contained within this document:

> "4. The Company agrees to make Health and Welfare contributions according to the National Master Freight Agreement after 60 day trial period. Pension will be the Company selected Pension Program."

23. On or about September 26, 1979, the Defendant and Local 147 entered into a "cartage agreement", a genuine copy of which is attached hereto as Exhibit "G" and incorporated herein, covering the period April 1, 1979 through March 31, 1982 which contained the following provision:

"CITY MEN — Health and Welfare and Pension benefits will be paid on city men as herein listed when they appear on the Union check-off list:

Kansas City	- 3 -	Sidney Clark
		Orville Burnworth
		Mike Boltz
Des Moines	- 1 -	Reed Erickson
Ft. Dodge	- 2 -	Robert Hagen
		Edward Mosbach"

24. Neither Exhibits "D", "E", "F", or "G", nor any other riders to the National Master Freight Agreement effective during the period April 1, 1979 to March 31, 1982, were ever approved or submitted for approval by the Conference Joint Area Committee under the provisions of Article 2, Section 5 of the National Master Freight Agreement.

25. Exhibits "D", "E", "F", and "G" violate the terms of Special Bulletin 20 issued by Plaintiffs in October, 1977, which prohibited differentiation among covered employees based on length of service, seniority or employment commencement date. A genuine copy of Special Bulletin 20 is attached hereto as Exhibit "H".

26. Exhibits "D", "E", "F", and "G" violate the terms of Special Bulletin 11 issued by the Plaintiffs in September, 1980, which prohibited the exclusion of any member of the collective bargaining unit from participation in the Pension Plan on an equal basis. A genuine copy of Special Bulletin 11 is attached hereto as Exhibit "I".

27. Exhibits "D", "E", "F" and "G" are null and void under Article 2, Section 5 and under Article 6, Section 2 of the National Master Freight Agreement.

28. By executing the 1976 to 1979 and the 1979 to 1982 National Master Freight Agreements, Defendant became a member of a national bargaining unit.

29. Defendant did not withdraw from the national bargaining unit.

30. Defendant gave no notice under Article 39 of the 1979 to 1982 National Master Freight Agreement that it desired to cancel its participation in that agreement.

31. At all times since April 1, 1976, the Defendant has been bound by executed collective bargaining agreements to make contributions to the Pension Fund and Health and Welfare Fund at the rates established in the applicable Supplements to the National Master Freight Agreement for all of its covered employees, including company over-the road drivers, owner-operators and local cartage drivers.

32. At all times since April 1, 1976, the Defendant has agreed to be bound by the terms and conditions set forth in the Central States Trust Agreement, pursuant to which the Pension Fund and the Health and Welfare Fund have been established and are maintained in accordance with § 302 of the Labor Management Relations Act of 1947 [29 USC 186] and §§ 402 and 403 of ERISA [29 USC 1102, 1103]. A copy of the Trust Agreement for the Pension Fund is attached hereto as Exhibit "J", and a copy of the Trust Agreement for the Health and Welfare Fund is attached hereto as Exhibit "K".

33. Defendant executed a participation agreement with Teamster Local No. 544 covering the period April 1, 1979 to March 31, 1982, whereby it agreed to make timely payments to Plaintiffs' Trust Funds, to be bound by the terms, conditions, rules and regulations governing Plaintiffs' Trust Funds and Trust Plans, and to designate as its representatives

such Trustees as are named in the Trust Agreements together with their successors. A genuine copy of the participation agreement is attached hereto as Exhibit "L".

34. Since April 1, 1976, Defendant has made contributions to the Pension Fund or to the Health and Welfare Fund for certain of its covered employees at rates below those rates established by the National Master Freight Agreement, and for other covered employees Defendant has made no contributions to the Pension Fund or to the Health and Welfare Fund.

35. Defendant was bound and continues to be bound by the terms of the National Master Freight Agreement covering the period April 1, 1982 through March 31, 1985, and by the Central States Supplements to that Agreement for Over-the-Road Motor Freight and Local Cartage, to make contributions to the Pension Fund and to the Health and Welfare Fund for its covered employees. In the alternative, from and after April 1, 1982, Defendant has continued to be bound by the National Master Freight Agreement covering the period April 1, 1979 through March 31, 1982, and by the Central States Supplements for Over-the-Road Motor Freight and Local Cartage, under Article 39 of the National Master Freight Agreement.

36. Defendant has failed to perform its obligations under the terms and conditions of the Pension Trust Fund Agreement and the Health and Welfare Fund Trust Agreement.

37. § 306(a) of the MEPPAA, adding § 515 to ERISA, provides:

> "Section 515. Every employer who is obligated to make contributions to a multi-employer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not

inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement."

40. Plaintiff's Pension Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XIV, Section 4, and Plaintiff's Health and Welfare Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XI, Section 4, that:

"Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer in accordance with the preceding sentence, shall be computed and charged to the Employer at the prime interest rate established by the Chase Manhattan Bank (New York, New York) for the fifteenth day (15th) day of the month for which the interest is charged. *Any judgment against an Employer entered on and after September 26, 1980, for contributions owed to this Fund shall include a mandate of the court the greater of (a) a doubling of the interest computed and charged in accordance with this section or (b) liquidated damages based on the unpaid contributions only (exclusive of interest) as determined by the court in the amount of 20% in accordance with the Multi-employer Pension Plan Amendments Act of 1980, the Employee*

Retirement Income Security Act, 29 U.S.C. 1132(g)(2)(C)(i) and (ii).''

39. § 502(g)(2)of ERISA, as amended by MEPPAA § 306(b)(2), provides:

> (2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan —
>
> (A) the unpaid contributions,
>
> (B) interest on the unpaid contributions,
>
> (C) an amount equal to the greater of —
>
> (i) interest on the unpaid contributions, or
>
> (ii) liquidated damages provided for under the Plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
>
> (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
>
> (E) such other legal or equitable relief as the court deems appropriate.
>
> For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1954.

40. Pursuant to the above-cited statutory and Trust Agreement provisions, Defendant is indebted to Pension Fund and

the Health and Welfare Fund for such sums as may be found to be due and owing from Defendant to Plaintiffs for delinquent contributions, interest thereon at the rate specified in the Trust Agreements, an additional amount equal to the interest on unpaid contributions, attorney fees, costs of this action, and other expenses of collection incurred by the Plaintiffs.

41. Despite demands that Defendant perform its statutory and contractual obligations with respect to making contributions to Plaintiffs' Trust Funds, Defendant has failed, neglected, omitted and refused to make said payments. Defendant owes to the Central States, Southeast and Southwest Areas Pension Fund at least $1,040,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest, and owes to Central States, Southeast and Southwest Areas Health and Welfare Fund at least $110,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest.

42. Plaintiffs have no adequate remedy at law for Defendant's refusal to comply with the terms, conditions, rules, and regulations governing Plaintiff's Trust Funds from and after December 31, 1983; and, unless the Defendant is enjoined from breaching and continuing to breach the terms of the collective bargaining agreements as well as the Trust Plans and Trust Agreements and mandatorily compelled to comply with said documents, Plaintiffs and their Trustees will suffer irreparable harm.

43. The Defendant continues to refuse to comply with the terms of the collective bargaining agreements as well as the Trust Plans and Trust Agreements, thus continuing to create additional delinquencies. The Pension Fund and the Health and Welfare Fund may be required to continue to provide benefits for the Defendant's employees, as they have in the past, even

though the Defendant has not made the required contributions to fund those benefits, thereby creating the risk that the assets of the Trust Funds will be inadequate to provide benefits for employees of other employers who are making the required contributions.

WHEREFORE, Plaintiffs pray for the following relief:

1. A permanent injunction upon hearing of this cause, enjoining the Defendant from violating the terms of the statutes, the collective bargaining agreements, the Trust Plans and the Trust Agreements, and requiring Defendant to remit its contributions to Plaintiffs on a timely basis.

2. A judgment on behalf of Plaintiff, Central States and Southeast and Southwest Areas Pension Fund in the sum of $1,040,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest, and a judgment on behalf of Plaintiff, Central States Southeast and Southwest Areas Health and Welfare Fund in the sum of $110,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest, and interest thereon at the rate specified in the Trust Agreements thereafter, an additional amount equal to accumulated interest on the unpaid contributions, liquidated damages, attorney's fees and the costs of this action.

3. A declaration by the Court that the Defendant is liable to the Plaintiffs for unpaid pension and health and welfare contributions from and after January 1, 1984 for its employees covered by the National Master Freight Agreement, and for further necessary or proper relief to compel Defendant to make proper contributions to Plaintiffs for such employees.

4. A declaration by the Court that Defendant's trip lessors are Defendant's employees rather than subcontractors under Article 32 of the National Master Freight and that the Defen-

dant is liable to Plaintiffs for unpaid pension and health and welfare contributions from and after April 1, 1976 for all such employees covered by the National Master Freight Agreement, and for further necessary or proper relief to compel Defendant to make proper contributions to Plaintiffs for such employees in addition to the amounts prayed for in this Court.

5. That the Court retain jurisdiction of this cause pending compliance with its Orders.

6. For such other, further or different relief as the Court may deem just and proper.

COUNT II

1. Plaintiffs are Trustees of the Central States Southeast and Southwest Areas Pension Fund (hereinafter referred to as "Pension Fund"), which is a multi-employer employee benefit plan within the meaning of § 3(1), (2), (3), and (37), § 502 and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MEPPAA) [29 USC § 2002(1), (2), (3) and (37), § 1132 and § 306, PL 96-364], and bring this action on behalf of themselves, the participants and the beneficiaries of this plan.

2. Plaintiffs incorporate by reference and replead herein paragraphs 2 through 33, inclusive, and paragraphs 36 through 39, inclusive, of Count I.

3. On April 1, 1982, the Defendant initiatied a statutory "complete withdrawal" from Plaintiffs' Pension Fund, as defined in ERISA § 4203 (29 USC § 1383), or a "partial withdrawal" from Plaintiffs' Pension Fund, as defined in ERISA § 4205 [29 USC § 1385].

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaration by the Court that Defendant's actions on or about April 1, 1982 constituted a total withdrawal or, alternatively, a partial withdrawal from Plaintiffs' Pension Fund, thereby triggering withdrawal liability under 29 USC § 1381, et. seq.. and for further necessary and proper relief to compel Defendant to satisfy its withdrawal liability.

2. That the Court grant Plaintiffs further and necessary proper relief under 28 USC § 2202.

3. That the Court award to Plaintiffs attorneys fees and the costs of this action.

4. That the Court retain jurisdiction of this cause pending compliance with its Orders.

5. For such other, further or different relief as the Court may deem just and proper.

ADAMS, HOWE & ZOSS, P.C.

By /s/ Paul A. Zoss
620 Hubbell Building
Des Moines, IA 50309
Telephone: (515) 246-1400

ATTORNEYS FOR PLAINTIFFS

Copy to:
David H. Goldman
Black, Reimer & Goldman
550 39th Street, Suite 300
39th and Ingersoll Avenue
Des Moines, Iowa 50312

[EXHIBITS OMITTED]

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al.,	)	
	)	CIVIL NO. 83-687-B
Plaintiffs,	)	
vs.	)	RESISTANCE TO MOTION
	)	FOR LEAVE TO AMEND
EASTER ENTERPRISES,	)	COMPLAINT AND FOR
INC., d/b/a	)	EXTENSION OF DEADLINES
ACE LINES, INC.,	)	
	)	
Defendants	)	

COMES NOW the defendant and resists the Novemer 8, 1984 motion of the plaintiffs to further amend their first amended Complaint herein and for an extension of deadlines. In support of this resistance, defendant states:

1. Plaintiffs' motion requests that the court grant them a blank check leave to amend upon the happening of certain conditions thirty days hence.

2. Plaintiffs' motion, apparently made pursuant to Fed. R.Civ.P. 15(a), is not properly presented in accordance with the requirements of Local Rule 2.2(.10) requiring that any party submitting a motion to amend shall attach to that motion the original of the amended pleading which the motion seeks to have filed. The required amended pleading is not attached to the motion and the motion is therefore to be denied.

3. At no time has defendant agreed to any extension of the deadlines set in the court Order of March 23, 1984.

4. This litigation is in its final stages, and the matters discussed in plaintiffs' motion raise new issues which would necessitate the addition of numerous additional parties and the commencement of monumental discovery nationwide. A leave to amend of this magnitude should not be granted without the defendant and the court having an opportunity to see and evaluate the amendment sought by the plaintiffs, which defendant takes to be the purpose of Local Rule 2.2(.10).

WHEREFORE, defendant prays that the plaintiffs' Motion for Leave to Amend and for Extension of Deadlines be denied. Defendant further requests that if plaintiffs' motion is deemed to be adequate for consideration of being granted that defendant be afforded the opportunity to make further submission and be granted the opportunity for oral argument.

/s/ David H. Goldman
BLACK, REIMER & GOLDMAN
550-39th Street, Suite 300
Des Moines, IA 50312
515/255-4141

ATTORNEYS FOR DEFENDANT
EASTER ENTERPRISES, INC.,
d/b/a ACE LINES, INC.

Copy to:

Paul A. Zoss
Adams, Howe & Zoss, P.C.
620 Hubbell Building
Des Moines, Iowa 50309
ATTORNEYS FOR PLAINTIFF

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, EARL L. JENNINGS, JR., HOWARD McDOUGALL, ROBERT J BAKER, R. V. PULLIAM, SR., and ARTHUR H. BUNTE, JR., Trustees of the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,	)	Civil No. 83-687-B
Plaintiffs,	)	COMPLAINT
vs.	)	
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	
Defendant.	)	

COMES NOW the Plaintiffs, by their attorneys, and for their cause of action against the Defendant states:

COUNT I

1. Plaintiffs are trustees of the Central States, Southeast and Southwest Areas Pension Fund (hereinafter referred to as "Pension Fund") and of the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to as "Health and Welfare Fund"), which are, individual-

ly, multiemployer employee benefit plans within the meaning of § 3(1), (2), (3), and (37), § 502 and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MEPPAA) [29 USC § 1002(1), (2), (3), and (37), § 1132 and § 306, PL 96-364], and bring this action on behalf of themselves, the participants and the beneficiaries of these plans.

2. The Defendant, Easter Enterprises, Inc., d/b/a Ace Lines, Inc., is an Iowa corporation with its principal place of business in the State of Iowa, and is engaged in the business of transporting goods in interstate commerce as a common carrier.

3. Jurisdiction of this Court is founded upon § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 185(a)]; § 502 of ERISA [29 USC § 1132]; and § 306 of the Multiemployer Pension Plan Amendment Act of 1980 in that Plaintiffs are aggrieved by the Defendant's failure to honor and continued refusal to comply with certain terms of collective bargaining agreements as well as the trust plans and trust agreements of the Pension Fund and the Health and Welfare Fund, in violation of Federal law and of the laws of the State of Iowa. The matter in controversy is between a Defendant who is a citizen of the State of Iowa and the Plaintiffs who are all citizens of a state other than the State of Iowa.

4. Defendant is an employer and a party in interest in an industry affecting commerce within the meaning of § 3(5), (11), (12), and (14) of ERISA [29 USC § 1002(5), (11), (12), and (14)], § 3 of MEPPAA and the Labor Management Relations Act of 1947 (29 USC § 151 *et seq.*).

5. At all times relevant hereto, the Defendant was a party to and agreed to abide by the terms of collective bargaining agreements between itself and various locals of the Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousers and Helpers of America (hereinafter referred to as "Teamster" locals), which are labor organizations that represent, for purposes of collective bargaining, certain employees of Defendant and employees of other employers in industries affecting interstate commerce within the meaning of § 2(5), § 9(a), and § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 151 *et seq.*].

6. The executed collective bargaining agreements described herein and attached hereto as Exhibit A contain provisions whereby Defendant agreed to make timely payments to Plaintiffs' Trust Funds for each employee covered by said agreements and to be bound by the terms and conditions set forth in the Central States Trust Agreements pursuant to which said funds have been established and are maintained in accordance with § 302 of the Labor Management Relations Act of [29 USC 186] and §§ 402 and 403 of ERISA [29 USC 1102, 1103]. A copy of the Trust Agreement for the Pension Fund is attached hereto as Exhibit B, and a copy of the Trust Agreement for the Health and Welfare Fund is attached hereto as Exhibit C.

7. Defendant has executed participation agreements whereby it agreed to make timely payments to Plaintiffs' Trust Funds, to be bound by the terms, conditions, rules and regulations governing Plaintiffs' Trust Funds and Trust Plans, and to designate as its representatives such Trustees as are named in the Trust Agreements together with their successors.

8. Defendant has failed to make timely payments to Plaintiffs' Trust Funds on behalf of each of its employees for those time periods for which contributions are due under the collective bargaining agreements and has failed to perform its obligations under the terms and conditions of the Pension Fund

Trust Agreement and Health & Welfare Fund Trust Agreement.

9. § 306(a) of the MEPPAA, adding § 515 to ERISA, provides:

> Sec. 515. Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

10. Plaintiff's Pension Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XIV, Section 4, and Plaintiff's Health & Welfare Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XI, Section 4, that:

> Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer in accordance with the preceding sentence, shall be computed and charged to the Employer at the prime interest rate established by the Chase Manhattan Bank (New York, New York) for the fifteenth day (15th) day of the month for which the interest is charged.

Any judgment against an Employer entered on and after September 26, 1980, for contributions owed to this Fund shall include a mandate of the court the greater of (a) a doubling of the interest computed and charged in accordance with this section or (b) liquidated damages based on the unpaid contributions only (exclusive of interest) as determined by the court in the amount of 20% in accordance with the Multiemployer Pension Plan Amendments Act of 1980, the Employee Retirement Income Security Act, 29 U.S.C. 1132(g)(2)(C)(i) and (ii).

11. § 502(g)(2) of ERISA, as amended by MEPPAA is (§ 306(b)(2), provides:

> (2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan —
>
> (A) the unpaid contributions,
>
> (B) interest on the unpaid contributions,
>
> (C) an amount equal to the greater of —
>
> (i) interest on the unpaid contributions, or
>
> (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
>
> (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
>
> (E) such other legal or equitable relief as the court deems appropriate.

> For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1954.

12. Pursuant to the above-cited statutory and Trust Agreement provisions, Defendant is indebted to Pension Fund and the Health and Welfare Fund for such sums as may be found to be due and owing from Defendant to Plaintiffs for delinquent contributions, interest thereon at the rate specified in the Trust Agreements, an additional amount equal to the interest on unpaid contributions, attorney fees, costs of this action, and other expenses of collection incurred by the Plaintiffs.

13. Despite demands that Defendant perform its statutory and contractual obligations with respect to making contributions to Plaintiffs' Trust Funds, Defendant has failed, neglected, omitted and refused to make said payments. Defendant owes to the Central States, Southeast and Southwest Areas Pension Fund the sum of $44,890.00 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $9,582.10 through October 19, 1983 for account No. 0059200-0105 and $11,121.60 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $3,644.96 through October 19, 1983 for account No. 0063100-0100.

14. Despite demands that Defendant perform its statutory and contractual obligations with respect to making contributions to Plaintiffs' Trust Funds, Defendant has failed, neglected, omitted, and refused to make said payments. Defendant owes to the Central States, Southeast and Southwest Areas Health & Welfare Fund the sum of $15,483.70 for unpaid contributions through October 19, 1983, and accumulated interest in the amount of $6,455.51 through October 19, 1983 for

in the amount of $6,455.51 through October 19, 1983 for account 1983 for account No. 0059200-0105 and $17,187.89 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $8,534.20 through September 15, 1983 for account No. 0063100-0100.

15. Plaintiffs have no adequate remedy at law for Defendant's refusal to comply with the terms, conditions, rules, and regulations governing Plaintiff's Trust Funds; and, unless the Defendant is enjoined from breaching and continuing to breach the terms of the collective bargaining agreements as well as the Trust Plans and Trust Agreements and mandatorily compelled to comply with said documents, Plaintiffs and their Trustees will suffer irreparable harm.

16. The Defendant continues to refuse to comply with the terms of the collective bargaining agreement as well as the Trust Plans and Trust Agreements, thus continues to create additional delinquencies. The Pension Fund and the Health and Welfare Fund may be required to continue to provide benefits for the Defendant's employees, as they have in the past, even though the Defendant has not made the required contributions to fund those benefits, thereby creating the risk that the assets of the Trust Funds will be inadequate to provide benefits for employees of other employers who are making the required contributions.

WHEREFORE, Plaintiffs pray for the following relief:

1. An Order to show cause why Defendant should not be enjoined from violating the terms of the statutes, the collective bargaining agreements, the Trust Plans and the Trust Agreements.

2. A preliminary injunction enjoining Defendant from violating the terms of the statutes, the collective bargaining agreements,

the Trust Plans and the Trust Agreements and requiring Defendant to remit its current contributions to Plaintiffs on a timely basis while this action is pending.

3. A permanent injunction upon hearing of this cause, enjoining the Defendant from violating the terms of the statutes, the collective bargaining agreements, the Trust Plans and the Trust Agreements and requiring Defendant to remit its contributions to Plaintiffs on a timely basis.

4.A judgment on behalf of Plaintiff, Central States and Southeast and Southwest Areas Pension Fund in the sum of $44,890.00 for unpaid contributions through October 19, 1983, and accumulated interest in the amount of $9,582.10 through October 19, 1983 for account No. 0059200-0105 and $11,121.60 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $3,644.96 through October 19, 1983 for account No. 0063100-0100 and interest thereon at the rate specified in the Trust Agreement thereafter, an additional amount equal to accumulated interest on the unpaid contributions, plus actual attorneys' fees and costs of this action, and for such other amounts as become due during the pendency of this proceeding.

5. A judgment on behalf of Plaintiff, Central States Southeast and Southwest Areas Health & Welfare Fund in the sum of $15,483.70 for unpaid contributions through October 19, 1983, and accumulated interest in the amount of $6,455.51 through October 19, 1983 for account No. 0059200-0105 and $17,187.89 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $8,534.20 through September 15, 1983 for account No. 0063100-0100 and interest thereon at the rate specified in the Trust Agreement thereafter, an additional amount equal to accumulated interest on the unpaid contributions, plus actual attorney's fees and

the costs of this action, and for such other amounts as become due during the pendency of this proceeding.

6. That the Court retain jurisdiction of this cause pending compliance with its Orders.

7.For such other, further or different relief as the Court may deem just and proper.

COUNT II

1. Paragraphs 1 through 15 of Count I, inclusive, are hereby incorporated by reference.

2.The benefits herein provided are pension benefits and medical, health, hospital, and welfare benefits, and thus are wages within the purview of § 91A.2(4)(c), Code of Iowa.

3. All wages to employees are to be paid to them or for their benefit at least monthly pursuant to § 91A.3, Code of Iowa.

4. The Defendant has wholly failed, refused, and neglected to pay the sums herein stated although demand has been made therefore.

WHEREFORE, the Plaintiffs pray as in Division I, plus liquidated damages as provided in § 91A.8 and defined in § 91A.2(6), Code of Iowa.

Respectfully submitted,
/s/ Paul A. Zoss
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ATTORNEYS FOR PLAINTIFFS

[EXHIBITS OMITTED]

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 86-2050

Central States Southeast and Southwest Areas Pension Fund—Howard McDougall, Trustee, Central States, Southeast and Southwest Areas Health and Welfare Fund—Howard McDougall, Trustee,	*	Appeal from the United States District Court for the Eastern District of Missouri.
Appellants,	*	
v.	*	
King Dodge, Inc.	*	
Appellee.	*	

Submitted: November 10, 1987

Filed: December 23, 1987

Before FAGG, Circuit Judge, HENLEY, Senior Circuit Judge, and WOLLMAN, Circuit Judge.

HENLEY, Senior Circuit Judge.

Appellants Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds and their Trustees (hereafter referred to collectively as Central States) commenced this collection action against appellee King Dodge, Inc. The sole issue on appeal is whether the district court applied the correct statute of limitations in barring all but $32.60 of Central States' claim. We reverse and remand to the district court.

The parties stipulated to all the relevant facts in this case. King Dodge is a party to a collective bargaining agreement which required King Dodge to make weekly contributions on behalf of its employees to a pension fund administered by Central States. As part of this obligation King Dodge executed a participation agreement assenting to the terms of Central States' Trust Agreement. For the period January, 1977 through October 15, 1985 King Dodge owes Central States $4,274.59 on its obligation to contribute to the pension fund and health and welfare fund. Central States' recovery of most this sum is dependent on which statute of limitations is applicable to its claim.

Relevant to the statute of limitations issue the Trust Agreement provides:

> This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois, including but not limited to the laws applicable to the rate of interest in the State of Illinois, except as such laws may be preempted by the laws and regulations of the United States.

Central States argues that this provision contractually binds the parties to Illinois' ten-year statute of limitations. During the pendency of this appeal a different panel of this court determined that the Trust Agreement's choice of law provision was inapplicable in another collection proceeding brought by Cen-

tral States. *Robbins v. Iowa Road Builders Co.*, 828 F.2d 1348, 1352-53 (8th Cir. 1987). The *Robbins* panel concluded that "an action to collect delinquent fund contributions states a federal cause of action. . . ." *Id.* Therefore, "arguments about the choice of law provision in the trust agreements and conflicts of law principles, arguments which are premised upon diversity jurisdiction, are inapposite," *id.* at 1353, and the most analogous statute of limitations from the forum state is applied. *Id.* The district court's holding in the present case appears to be foursquare with the decision in Robbins as to the inapplicability of Illinois' statute of limitations. However, because under either Illinois law or Missouri law a ten-year statute of limitations applies, we need not decide definitively which state's statute to apply.

"An action upon any writing . . . for the payment of money or property" shall be commenced within ten years. Mo.Ann.Stat. § 516.110(1) (Vernon 1952). All other actions upon contracts are to be commenced within five years. Mo.Ann.Stat. § 516.120(1) (Vernon 1952). Central States has previously litigated this issue in the Missouri district courts, both times resulting in the application of the five-year statute of limitations. *Central States, Southeast & Southwest Areas Pension Fund v. Aalco Express Co.*, 592 F.Supp. 664, 666 (E.D. Mo. 1984); *Robbins v. Newman*, 481 F.Supp. 1241, 1243 (E.D. Mo. 1979) (hereafter *Newman*). *Central States* is of little analytic value in the present case because there Central States admitted the applicability of § 516.120(1) and the gravamen of the decision was the effect of the choice of law provision in the Trust Agreement. 592 F.Supp. at 666.

The applicability of the reasoning in *Newman* is more troublesome. Fortunately, the Missouri Court of Appeals has recently addressed the distinction between the two statutes.

> It is the evolved principle of our decisions that, in order for the ten-year limitations period of § 516.110 to appertain, the writing must be not only for the payment of money, but also must contain a "*promise to pay money*. . . ." Once that obligation is found from the writing, the exact amount to be paid or other detail of the obligation may be shown by extrinsic evidence— *but not the promise itself.*

Superintendent of Insurance of New York v. Livestock Market Insurance Agency, Inc., 709 S.W.2d 897, 900 (Mo. Ct. App. 1986) (emphasis in the original) (citation omitted). In *Newman* the individual defendants' liability was at issue; thus the promise to pay money required proof through extrinsic facts. *Newman*, 481 F.Supp. at 1243; *see Superintendent of Insurance of New York*, 709 S.W.2d at 900 ("Thus, although in *[Martin v.] Potashnick* [358 Mo. 833, 217 S.W.2d 379 (1949)], there was a writing—an open account—that some indebtedness existed, that the debt was due and payable was determinable only by extrinsic evidence, and hence the contract was not a promise to pay money within § 516.110.") This case, however, is distinguishable from *Newman*. *King Dodge* does not deny its liability (apart from the statute of limitations defense) to pay Central States under the Trust Agreement. King Dodge asserts in its brief that because extrinsic evidence (i.e., the number of employees) is necessary to calculate the total debt due that § 516.110(1) does not apply. As we have seen, however, extrinsic evidence may be used to prove the exact amount owing. *Superintendent of Insurance of New York*, 709 S.W.2d at 900. "'[T]he essence of a promise to pay money is that it is an acknowledgment of an indebtedness, an admission of a debt due and unpaid.'" *Id.* (quoting *Potashnick*, 358 Mo. at _____, 217 S.W.2d at 381) (emphasis

by the court). Because King Dodge's promise is contained within the four corners of the writing, § 516.110(1) is the applicable statute of limitations if Missouri law applies.

Since under either Missouri or Illinois law a ten-year period of limitations applies, the decision of the district court is reversed and the cause is remanded for application of a ten-year statute of limitations and for further proceedings not inconsistsent with this opinion.

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS,EIGHTH CIRCUIT.